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IN THE

United States Supreme Court

OCTOBER TERM 1964

NO. 832 [redacted]

PETE AVGIKOS, *Petitioner*

versus

STATE OF LOUISIANA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

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IN THE

United States Supreme Court

OCTOBER TERM 1964

NO. ..... MISC.

PETE AVGIKOS, *Petitioner*

versus

STATE OF LOUISIANA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

PETITION FOR WRIT OF CERTIORARI

Pete Avgikos prays this Court to issue a writ of certiorari to review the final order of the Supreme Court of Louisiana, dated December 1, 1964, wherein the said Court denied petitioner's application for certiorari and review of an Order of the First Judicial District Court, Caddo Parish, Shreveport, Louisiana, dated November 10, 1964, denying petition for writ of habeas corpus and ordering petitioner extradited to Arkansas.

OPINIONS BELOW

The opinion of the Supreme Court of Louisiana, dated December 1, 1964, _____, La. _____, _____ So. 2d_____, has not yet been reported. It is found in the record at page 13. The opinion of the First Judicial District Court, Caddo Parish, dated November 10, 1964, has not been officially reported. It is in the form of a Minute Entry, and is found in the record at page 26.

JURISDICTIONAL STATEMENT

The judgment of the Supreme Court of Louisiana sought to be reviewed is dated and entered December 1, 1964 (R. 13). No rehearing, or extension of time for filing this petition, has been requested or ordered. The jurisdiction of this Court is conferred by 28 U.S.C. 1257 (3).

QUESTION PRESENTED FOR REVIEW

Whether, in an interstate extradition proceeding, the following statutory and constitutional requirements, respectively, are binding upon the asylum state:

(1) The requirement of the federal rendition statute, *18 U.S.C. 3182*, that a requisition must be accompanied by either an indictment, or affidavit sworn to before a *magistrate*;

(2) The requirement of the *Fourth Amendment*, that no arrest warrant shall issue but upon *probable cause*; and

(3) The requirement of the *Fourteenth Amendment*, that no person shall be deprived of liberty without *due process of law*.

Stated another way, and more in the terms and cir-

cumstances of the instant case: WHETHER an asylum state may, by statute, set less stringent requirements than the ones mentioned above, as in the instant case, where the asylum state of Louisiana has ordered petitioner extradited to Arkansas, although (1) the requisition was not accompanied by indictment, or by affidavit made before a magistrate, as required by *18 U.S.C. 3182*, but by an information and affidavit of the prosecuting attorney, verified before the Circuit Clerk, who is a non-magistrate; and (2) the said affidavit was not sworn to by anyone having actual or personal knowledge of the facts, as required by the "probable cause" provision of the *Fourth Amendment*, but by an official accuser (the prosecuting attorney) whose source of information or belief was not shown; and (3) the trial judge at the extradition and habeas corpus hearing refused to entertain or allow filed petitioner's affidavit denying that he was the person named in the extradition papers, thus abridging his right to a full and fair hearing, as required by the due process clause of the *Fourteenth Amendment*.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

18 U.S.C. 3182

FUGITIVES FROM STATE OR TERRITORY TO STATE, DISTRICT OR TERRITORY.—Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged. (June 25, 1948, c. 645, § 1, 62 Stat. 822.)

Fourth Amendment, United States Constitution

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fourteenth Amendment, United States Constitution

Due process clause.

Louisiana Statute L.S.A. 15:160

This statute provides that the Governor of Louisiana, in an extradition case, "shall not issue his warrant unless the requisition be accompanied by a duly certified copy of a sworn statement of the complainant, of a statement of facts by the prosecuting attorney and of the indictment, information or affidavit pending in the state or territory . . ."

STATEMENT OF THE CASE

On September 14, 1964, the Governor of Arkansas, made requisition on the Governor of Louisiana for extradition of the petitioner (R. 29). Accompanying the requisition was an information filed by the prosecuting attorney of Garland County, Arkansas, charging petitioner with having fraudulently obtained personal property by means of an $80 check, knowing that he did not have sufficient funds on deposit in the bank to cover said check (R. 32).

Also accompanying the requisition was an affidavit by the same prosecuting attorney, reiterating "on oath" the facts and the charge set forth in the information. The affidavit did not set forth the sources of the prosecuting attorney's information or the grounds of his belief, and made no showing that he was swearing to facts within his own personal or actual knowledge. The affidavit was not made before a magistrate of Arkansas as required by *18 U.S.C. 3182*, but was sworn to before one "Sherlon Hilliard, Circuit Clerk" (R. 35).

On October 7, 1964, the Governor of Louisiana issued an Executive Warrant for petitioner's arrest and delivery to Arkansas authorities (R. 37).

The federal questions now sought to be reviewed were raised as follows:

Petitioner challenged the validity of the Executive Warrant by filing in the First Judicial District Court, Caddo Parish, Shreveport, Louisiana a motion to quash the warrant (R. 39-41) and a petition for writ of habeas corpus (R. 42-47), alleging, *inter alia:*

(1) "The said Executive Warrant fails to meet the requirements of 18 U.S.C. 3182, which statute requires that an extradition warrant may be based only upon 'a copy of an indictment found or an affidavit made before a *magistrate*.' The only affidavit attached to the extradition papers in this case is an affidavit of the official accuser, David B. Whittington, which affidavit shows on its face that it was not made before a 'magistrate', but was made before one Sherlon Hilliard, Circuit Clerk, who is not a 'magistrate' within the meaning of 18 U.S.C. 3182." (R. 40, 43).

(2) "The said Executive Warrant of the Governor of Louisiana fails to meet the requirements of the Fourth Amendment of the United States Constitution and Article 1, Sec. 7 of the Louisiana Constitution, providing that no warrant shall issue except upon 'probable cause.' The controlling decisions of the United States Supreme Court defining 'probable cause' hold that to establish 'probable cause' for the issuance of a warrant, the 'real accuser' (as contrasted to an 'official accuser') must make complaint, under oath, before a *magistrate*, stating facts within his personal knowledge of the commission of the crime." (R. 41, 44).

(3) Petitioner also raised the issue of identity, demanded "strict proof" that he was the same person

named in the extradition papers, and submitted to the Court an affidavit "denying identity." The Court refused to entertain or to allow the affidavit filed "on the grounds that the State would not have the opportunity of cross examination," to which ruling the defendant noted "an exception for purposes of appeal." (R. 44, 45).

On November 10, 1964, the Court denied the application for writ of habeas corpus and ordered petitioner surrendered to Arkansas, noting in its Order (Minute Entry) that "the entire extradition matter was before the Court." (R. 26).

Petitioner applied to the Supreme Court of Louisiana for writs of mandamus, prohibition, certiorari and review of the above-mentioned Order (R. 14-24) assigning as error *inter alia*, the adverse ruling of the trial court with respect to each of the three contentions set forth above (R. 18-19).

On December 1, 1964, the Supreme Court of Louisiana denied relief, stating in its Order: "Writs refused. The showing made in the application is insufficient to justi. an exercise of our supervisory jurisdiction." (R. 13).

The instant petition for writ of certiorari seeks review by this Court of the above-mentioned Order of the Louisiana Supreme Court, and is being filed within 90 days of the date of the Order sought to be reviewed.

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT

(1) The Supreme Court of Louisiana has held, in effect, that a state may, by statute, destroy the require-

ment of *18 U.S.C. 3182*, that an affidavit in support of a requisition must be made before a magistrate. This is a federal question of substance which this Court has not yet, but now should, determine.

(2) The Supreme Court of Louisiana has held, in effect, that the requirement of the *Fourth Amendment*, that no warrant shall issue but upon probable cause, is not binding upon the states in extradition proceedings. In so holding, the Court has decided a federal question of substance in a way probably in conflict with the applicable decision of this Court. *Mapp* v. *Ohio*, 367 U.S. 643.

(3) The Supreme Court of Louisiana has held, in effect, that the refusal of the trial judge in an extradition and habeas corpus hearing, to entertain or allow filed the affidavit of the accused denying that he is the person named in the extradition warrant, does not deprive the accused of a full and fair hearing as required by the due process clause of the *Fourteenth Amendment*. This is a federal question of substance which this Court has not yet, but now should, determine.

ARGUMENT

It is anomalous that while the trend of this Court's recent decisions has been to apply more and more strenuously, to state prosecutions, the Fourth Amendment's requirement of probable cause for the issuance of a warrant, as in *Mapp* v. *Ohio*, 367 U.S. 643, *supra*, and to make binding upon the states other federal constitutional and statutory requirements falling within the scope of due process, the trend of the highest courts of a number of states has been in the opposite direction.

at least in the area of interstate extradition, as in the instant case.

So far, this Court does not appear to have passed, specifically, upon the three-part question which is involved in the instant case, although this question, in one aspect or another, has arisen frequently in interstate extradition cases in recent years, and will probably continue to vex and confuse the highest courts of the various states unless and until it is resolved by this Court.

A State May Not, by Statute, Destroy the Requirement of 18 U.S.C. 3182, That An Affidavit in Support of a Requisition Must Be Made Before a Magistrate

In the case of *Ex Parte Peairs*, 162 Tex. Cr. R._____, 283 S.W. 2d 755 (1955), a divided court held that notwithstanding the requirement of *18 U.S.C. 3182*, that an affidavit in support of a requisition must be made before a magistrate, the State of Texas could, by statute, provide for a "less strenuous" requirement, and could order an accused extradited on the basis of an information and affidavit sworn to before a non-magistrate. The majority and dissenting opinions in the *Peairs* case clearly present, respectively, both sides of this question. Since no opinion was written in the instant case, a discussion of the *Peairs* case will be helpful in understanding the identical question which is involved in both cases.

In *Peairs*, the State of Arkansas sought to extradite the accused from Texas. The requisition was not accompanied by either an indictment, or by an affidavit made before a magistrate, as required by *18 U.S.C. 3182*, but by an information filed by the prosecuting attorney, and an affidavit sworn to before a non-magistrate (notary

public), the sufficiency of which was challenged by the accused on the ground that it failed to meet the requirement of *18 U.S.C. 3182, supra.* The Texas Court of Criminal Appeals (one judge dissenting) held:

(1) That following adoption of the *Uniform Criminal Extradition Act* by Texas, the federal rendition statute (*18 U.S.C. 3182*) ceased to be the exclusive method of extradition between states which had adopted said Act; that one section of the Act as adopted by Texas, *Vernon's Ann. C.C.P. art. 1008a, Sec. 3,* provided that an "information supported by affidavit" would support a requisition; that such affidavit need not be sworn to before a magistrate; and that it was sufficient for the affidavit to be verified before a non-magistrate (notary public).

(2) That "any state statute which facilitates the rendition of persons charged with crime is not in conflict with the Federal Constitution and rests rather upon the comity between states."

(3) That "A State statute which makes less strenuous requirements than those set forth in the Federal rendition statue is valid and does not conflict with the federal statute."

While the Louisiana Supreme Court in the instant case did not write an opinion, its decision denying relief necessarily followed and embraced the holding of the Texas Court in the *Peairs* case, *supra.*

The decision in the instant case also follows a prior Louisiana case, *In re Chelette,* 238 La. 683, 116 So. 2d 293 (1959), where it was held that a mere bill of information would support extradition of the accused to Arkansas, citing *L.R.S. 15:160,* which provides that the

Governor of Louisiana "shall not issue his warrant unless the requisition be accompanied by a duly certified copy of a sworn statement of the complainant, of a statement of facts by the prosecuting attorney and of the indictment, information or affidavit pending in the state or territory . . ."

In direct conflict with the holding of the Supreme Court of Louisiana in the instant case and in the *Chelette* case, *supra*, and with the holding of the Texas Court majority opinion in the *Peairs* case, *supra*, is the unanimous decision of the Supreme Court of Colorado, sitting *en banc*, in the case of *Henry* v. *McArthur*, 1950, 122 Colo. 474, 223 P. 2d 621, in which case the state of Arkansas sought extradition of the accused, upon the basis of an information and affidavit identical in all essential aspects with the information and affidavit in the instant case: i.e., sworn to by an official accuser (the prosecuting attorney) before a non-magistrate (Circuit Clerk). The Supreme Court of Colorado held:

> An information, although provision is made for such a document in the prosecution of crime, may not be substituted for an indictment in extradition proceedings. However, where there is an attempt to rely on an information properly subscribed under oath, it must be accompanied by "an affidavit made before a magistrate of any State or Territory. . ." This affidavit should set forth the facts and circumstances relied upon for proof of the crime, and be under the oath or affirmation of some person familiar with the facts sufficient to justify the testimony as to their truthfulness, and such affidavit is to be made before a magistrate. Such magistrate may be any judicial officer having summary jurisdiction in criminal cases, including justices of the peace, police judges, and any other person classified under our

laws as a magistrate. A leading case on the questions here involved is *Ex parte Hart*, 4 Cir., 63 F. 249, and directly in point is *Ex parte Stanley*, 133 Tex. Cr. R. 192, 109 S. W. 2d 1053. We conclude that the requisition issued by the Governor of Arkansas in this case was not in compliance with the statute, in that it contained neither an indictment nor an affidavit, as is clearly required; and that the warrant issued thereon by the Governor of Colorado for the arrest and removal of petitioner was void.

Also in direct conflict with the decisions in the *Peairs* and *Chelette* cases, *supra*, and with the decision in the instant case, is the dissent of Judge Davidson in the *Peairs* case, *supra*, in which dissent the position of the petitioner in the instant case is well stated:

> The right of interstate rendition must, of necessity, be founded upon and controlled by the Federal Constitution and statutes mentioned.
>
> The Federal Constitution provided the authority. Congress provided the implements for making effectual the extradition of fugitives from justice from one state to another.
>
> It is clear that the matter of interstate extradition is what it purports to be – that is, a matter between the states and therefore interstate. But, also, the Congress has fully and completely pre-empted that field and taken over the right to control interstate extradition. *35 C.J.S., Extradition*, Sec. 2, p. 318, furnishes the authority for the conclusion expressed. Prior to such pronouncement by my brethren, I never heard that interstate extradition is a matter within the control of the individual states. My understanding of the rules is stated in *35 C.J.S., Extradition*, Sec. 3, p. 319, as follows:
>
> > "While constitutional and statutory provisions relating to interstate extradition should be lib-

> erally construed to effect their purposes, their essential elements and requirements must be strictly followed. State legislation on the subject is valid only to the extent to which it aids and is not inconsistent with the federal constitution and statutes."
>
> The holding of my brethren is directly contrary to the rule just stated.
>
> * * *
>
> Unless and until an accused is charged in the demanding state by indictment or affidavit made before a magistrate, the right to extradite him is not shown. Such is the mandate of the federal statute. The power does not lie with the legislature to destroy that statute.

In the *Peairs* case, *supra*, an appeal was taken to this Court, but was dismissed "for want of a substantial federal question." 350 U.S. 858.

Petitioner submits that this Court should re-examine its refusal to review the *Peairs* case, and that the question involved in that case, and the identical question involved in the instant case, concerning the requirements of *18 U.S.C. 3182*, should be resolved by this Court.

The importance of the question involved is pointed up by the conflicting decisions of the highest courts of other states which are cited in the annotations of *35 C.J.S., Extradition, Sections 14 (1)* and *14 (2)*, pages 408-413, and *25 C.J., Extradition, Sec. 24*, pages 261-262.

In deciding this question, it should be noted that the so-called *Uniform Criminal Extradition Act*, which the Texas Court apparently relied upon in the *Peairs* case, had been adopted by the Texas Legislature; but it has never been adopted, as such, by the state of Louisiana, hence there is no question in the instant case of an inter-

state compact. Moreover, the so-called Uniform Act is not uniform at all. For instance, the so-called Uniform Act adopted by Arkansas *(Acts 1935, No. 126, Ark. State 1947, Sec. 43-3001 to Sec. 43-3028)* contains eleven "significant differences" from the original Act. (For these differences, see *The Handbook on Interstate Crime Control*, Rev. Ed. July 1955, Council of State Governments, Chicago, pp. 18, 20).

It should also be noted that under Arkansas law, a "magistrate" is defined "judges of city or police courts, mayors, and justices of the peace." *Sec. 43-306, Ark. Statutes 1947*. A circuit clerk is not a magistrate under Arkansas law.

The Requirement of the Fourth Amendment, That No Warrant Shall Issue But Upon Probable Cause, Is Binding Upon the States in Extradition Proceedings

The second part of the question involved in the instant case relates to the requirement of the *Fourth Amendment* that no warrant shall issue "but on probable cause." The effect of the *Fourth Amendment* was not considered in any of the cases mentioned above, probably because the said cases pre-dated *Mapp* v. *Ohio, supra*, in which case this Court, for the first time, ruled that the *Fourth Amendment* was applicable to state prosecutions.

The controlling federal decisions hold that to constitute probable cause for the issuance of an arrest warrant, the complainant "must speak from personal knowledge." *United States* v. *Baumert*, 179 F. 735.

In the case of *United States ex rel King* v. *Cokey*, D.C., 32 F. 2d 793, 794, the Court (citing *United States* v. *Baumert, supra, United States* v. *Wells*, D.C., 225 F. 320,

and *United States* v. *Ruroede*, D.C., 220 F. 210) stated the rule thus:

> A complaint not based upon the complainant's personal knowledge, and unsupported by other proof, confers no jurisdiction upon the commissioner to issue a warrant.

The foregoing case was cited with approval in *United States* v. *Langsdale*, D.C., Mo., 1953, 115 F. Supp. 489, where it was held that a complaint not based upon personal knowledge conferred no jurisdiction to issue a warrant. Petitioner cited the *Langsdale* case in the Court below (R. 22).

In the case of *Rice* v. *Ames*, Ill., 1901, 180 U.S. 371 (a foreign extradition case) this Court said:

> 2. The first assignment of error is to the effect that the commissioner issuing the warrant had no jurisdiction, because the complaint of Greer was upon information and belief. . . . (The complaints) were obviously insufficient, since the charges were made solely upon information and belief. This is bad, even in extradition proceedings. . . . Nor is it saved by the fact that Greer described himself as government detective for the Province of Ontario, and fully authorized by the Attorney General to act as the agent of the government to prosecute extradition proceedings. *Ex parte Smith*, 3 McLean, 121, 135; *Ex parte Lane*, 6 Fed. Rep. 34; *In re Young Mfg. Co.* (1900), 2 Ch. 753.

In re Rule of Court, 20 Fed. Cas. page 1336, 1337, Fed. Cas. No. 12,126, 3 Woods 503, Bradley, C.J. alluded to the "evil" of warrants being issued "upon the affidavit of some officer, who, upon the relation of others whose names are not disclosed, swears that, upon information, he has reason to believe, and does believe, the person

charged has committed the offense charged." Then, laying down a positive Rule for the courts to follow with respect to the issuance of warrants based upon complaints, the Court said:

> "In view of these considerations, and to correct the evil alluded to, we have prepared and now make the following general order . . . in the manner of issuing warrants of arrest against persons charged with crime, to wit: No warrant shall be issued . . . upon mere belief, or suspicion of the person making such charge; but only upon probable cause, supported by oath or affirmation of such person, in which shall be stated the *facts within his own knowledge* constituting the grounds for such a belief or suspicion." (Emphasis by brief writer).

In accord are the following decisions of this Court: *In re Strauss*, 197 U.S. 324, and *McNichols* v. *Pease*, 207 U.S. 100.

It would appear that the affidavit of the prosecuting attorney in the instant case, who obviously had no personal or actual knowledge of the alleged facts, does not meet the federal standard of "probable cause" required by the Fourth Amendment.

In view of this Court's ruling in *Mapp* v. *Ohio, supra*, that the Fourth Amendment is applicable to state prosecutions insofar as its protection of an individual's *property* is concerned (i.e., probable cause is required for warrant of search and seizure), it would be anomalous indeed to withhold the protection of that Amendment insofar as an individual's *liberty* is concerned.

Right to Fair Hearing Under Due Process Clause of Fourteenth Amendment Abridged by Refusal of Court to Entertain Affidavit of Accused Denying He was Person Named in Warrant

The third part of the question involved in this case concerns the refusal of the trial court to entertain or receive in evidence petitioner's affidavit, denying that he was the person named in the extradition papers, on the ground that the State could not cross-examine the affidavit.

This appears to be a question not previously raised in or passed upon by this Court.

In view of the fact that all the papers submitted by the State were in documentary or affidavit form, not subject to cross-examination by the petitioner, it would seem that in all fairness, the petitioner's affidavit denying identity should have been received and considered. Since the State introduced no evidence whatsoever that the petitioner then in Court was the person named in the warrant, and relied solely upon the similarity of name, the petitioner's affidavit denying identity would have shifted the burden of proof to the State and would have required petitioner's discharge.

Since interstate extradition is a federal matter and controlled by federal law, the question here involved is a federal question, and a substantial one that should be resolved by this Court.

CONCLUSION

For the foregoing reasons petitioner submits that the writ of certiorari should issue as prayed.

Respectfully submitted

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ORDER (MINUTE ENTRY) OF FIRST JUDICIAL CIRCUIT, CADDO PARISH, SHREVEPORT, LOUISIANA, DATED NOVEMBER 10, 1964 (R. 26).

Shreveport, Louisiana, Tuesday, November 10, 1964.
Judge John A. Dixon, presiding.
63,789, State of Louisiana vs. Pete Avgikos

EXTRADITION PROCEEDING

The accused, being in open court accompanied by his counsel, J. Waddy Tucker, the Motion to Quash Executive Warrant filed by the accused was further argued and submitted. Whereupon, said motion was denied. A filing styled "Writ of Habeas Corpus" was filed by the accused and same being considered by the Court, said application for a writ of Habeas Corpus was denied by the Court for the reason that there was no basis for issuance of the writ since the accused was present in open court and free on bond and for the further reason that the application for writ presented no new matter not already before the Court. Upon inquiry by the Court, counsel for the accused acknowledged that the entire extradition matter was before the Court, all the evidence having been adduced and all arguments had. Whereupon, the Court granted the application of the State of Arkansas for extradition and ordered the accused delivered into the custody of the proper authorities from that State. Counsel for the accused then gave notice in open court, in the presence of the Assistant District Attorney, of his intention of applying to the Supreme Court of Louisiana for writs of certiorari, prohibition, and review and requested the proceedings be stayed pending the perfection of the application for writs. Whereupon, the Court ordered that the proceedings be stayed for a period of five (5) days

pending perfection of application for writs and the accused was ordered continued on his same bond.

ORDER OF THE SUPREME COURT OF LOUISIANA DATED DECEMBER 1, 1964 (R. 13).

Supreme Court of Louisiana, New Orleans. State of Louisiana vs. Pete Avgikos. Dec. 1, 1964. No. 47,553. In re.: Pete Avgikos applying for writs of prohibition, mandamus and certiorari.

WRITS REFUSED.

The showing made in the application is insufficient to justify an exercise of our supervisory jurisdiction.

(Signed) JBH, JBF, FWH, EHMcC, WBH, JWS, FWS.

A true Copy, Clerk's Office, Supreme Court of Louisiana, New Orleans, Dec. 1, 1964, Harold A. Moise Jr., Deputy Clerk.

CERTIFICATE OF SERVICE

I certify that I have served on the Respondent herein a copy of the foregoing petition by mailing a copy of same to each of the following attorneys representing the Respondent:

(1) Hon. Jack P. F. Gremillion
Attorney General of the State of Louisiana
State Capitol
Baton Rouge, La.

(Attention: M. E. Culligan, Esq.,
Assistant Attorney General)

(2) Hon. John A. Richardson
District Attorney, Caddo Parish,
201 Caddo Parish Court House
Shreveport, La.
(Attention: Albert S. Lutz, Jr., Esq.,
Assistant District Attorney)

Air Mail postage prepaid, this .....day of.....,
1965.

CHESTER E. WALLACE
Attorney for Petitioner

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Number 832 Misc.

In the Supreme Court of the United States

OCTOBER TERM, 1964

PETE AVGIKOS,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

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Number 832 Misc.

In the Supreme Court of the United States

OCTOBER TERM, 1964

PETE AVGIKOS,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

Petitioner, Pete Avgikos, has based his petition for a Writ of Certiorari on three points to which we reply as follows:

1.

Petitioner claims that an extradition may be based only on an indictment or an affidavit made before a Magistrate and that no such documents are present in this proceeding.

It is true that under the Federal Statute (18 USCA § 3182) extradition is provided for only when the requisition is accompanied by either an indictment or an affidavit made before a magistrate but Louisiana, as well as the majority of the other states, have also provided that extradition may also be based upon a

Bill of Information. LSA 15:160 states that the requisition must be accompanied by a "indictment, *information* or affidavit." In this case the extradition is based on a Bill of Information and that is all that is required by the Louisiana Statute.

An extradition by the State of Arkansas based upon a Bill of Information was approved by the Louisiana Supreme Court in the case of *In re Chelette*, 238 La. 683, 116 So. 2d. 293 (1959).

In the case of *Ex Parte Peairs*, 162 Tex. Cr. 243, 283 S.W. 2d 755, appeal dismissed *Peairs v. State of Texas*, 76 S. Ct. 104, 350 U. S. 858, 110 L. Ed 762, which is discussed at length in petitioner's brief (at pages 9, 10, 11, 15). This same point was passed upon and the Texas Court approved and upheld an extradition based upon a Bill of Information which was in accordance with the provisions of the Uniform Criminal Extradition Act which had been adopted in Texas and 39 other states. In the Peairs case an appeal to the United States Supreme Court was dismissed "for want of a substantial federal question."

Petitioner has cited the case of *Henry v. McArthur*, 1950, 122 Colo. 474, 223 P. 2d. 621, in which the Colorado Court did not permit an extradition to the State of Arkansas which was based on a Bill of Information. We think that case can be distinguished on the grounds that the State of Colorado did not have a statute such as the Louisiana Statute, LSA 15:160, which permits extradition based upon a Bill of Information.

2.

Petitioner has argued that the Governor of the State of Louisiana did not have "probable cause" for the issuance of his Executive Warrant for the arrest of Avgikos.

LSA 15:160 sets forth the documents that the Louisiana Governor must have before him before he issues an Executive Warrant in an extradition case.

The cases of *State v. Fleming*, 225 La. 564, 73 So. 2d. 462 (1954) and *In re Chelette*, 238 La. 683, 116 So. 2d. 293 (1960) have liberally construed the requirements of LSA 15:160 and the *Fleming case* holds that it is not necessary for the victim or person wronged in the criminal action to sign the complaint.

> "The respondents have not favored us with a brief but we assume from statements in the record that the trial judge was of the opinion that the "complainant", as referred to in LSA-R.S.15:160, denotes the victim or person wronged in the criminal action pending in the demanding state. This conclusion is erroneous for the reason that it would be impossible to extradite a person charged with murder and prevent those upon whom the duty of the enforcement of the law rests from bringing to justice persons who had committed offenses. In the present case the complaint was made and sworn to by V. H. Seiveno, a detective of the California Police Department, which is a sufficient compliance with the statute."

3.

Petitioner contends that the trial court did not give him a "fair hearing" because it did not permit him to

file an affidavit denying that he was the person named in the extradition papers.

At the hearing the defendant, Pete Avgikos, was present and the court offered him the opportunity to take the witness stand himself or to present any other witnesses to testify as to his identity but no such evidence was offered. The defendant offered absolutely no evidence at all.

CONCLUSION

For the foregoing reasons, respondent submits that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE

I, Jack P. F. Gremillion, a member of the bar of the Supreme Court of the United States and Louisiana Attorney General, of counsel herein, hereby certify that a copy of the above and foregoing brief was served on Messrs.

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counsel for the petitioners, by depositing same in the United States Mail with sufficient postage affixed.

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